

possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative review hearing. The Individual submitted five exhibits into the record (Exs. A through E) and presented the testimony of three witnesses, including his own testimony.² The DOE Counsel submitted eight numbered exhibits (Exs. 1 through 8) into the record and presented the testimony of the DOE Psychologist at the hearing.

II. Notification Letter and Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for a security clearance. Ex. 1. That information pertains to Guideline G and Guideline J of the Adjudicative Guidelines. Ex. 1. Under Guideline G, “[e]xcessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” Adjudicative Guidelines at ¶ 21. Guideline J addresses criminal activity, which can create doubts about a person’s judgment, reliability, and trustworthiness. *Id.* at ¶ 30. Furthermore, it calls into question a person’s ability or willingness to comply with laws, rules, or regulations. *Id.*

With respect to Guideline G, the LSO alleged that, on March 8, 2022, the DOE Psychologist, in his Report, diagnosed the Individual with AUD, moderate, in early remission. As a basis for citing both Guideline G and Guideline J, the LSO cited the Individual’s history of arrests, most of which are alcohol related. The derogatory information cited by the LSO justifies the invocation of Guideline G and Guideline J.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See*

² The Individual’s exhibits consist of the results of drug testing that the Individual has undergone (Exhibit A), the results of the Individual’s use of the ignition interlock device (Exhibit B), the Individual’s completion certificates from the courses he has taken as a part of his recovery (Exhibit C), the Individual’s AA attendance records (Exhibit D), and court records related to the Individual’s criminal history (Exhibit E).

Department of Navy v. Egan, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The Individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The Individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

In March 1999, the Individual was charged with being a minor in possession of alcohol. Ex. 11 at 79. As a result of this charge, the Individual completed alcohol education classes and one year of probation. *Id.*

In September 2000, the Individual was charged with possession of marijuana. Ex. 7 at 10. He was placed on probation for one year and completed community service. *Id.*

In May 2002, the Individual was charged with possession of marijuana and drug paraphernalia. *Id.* at 9. As a result of this charge, the Individual paid a fine, completed community service, attended counseling sessions, and had one year of supervised probation. *Id.*

In August 2003, the Individual was charged with driving while intoxicated (DWI), financial responsibility, and offense by person controlling a vehicle.³ *Id.* at 8. He pled guilty to DWI, paid a fine, and completed one year of probation. *Id.*

In May 2005, the Individual was charged with felony burglary. Ex. 11 at 80. He admitted that he had consumed alcohol prior to this incident. *Id.* These charges were dismissed upon the successful completion of 17 months of probation. *Id.*

In May 2006, the Individual was charged with possession of marijuana. *Id.* at 80-81. He pled guilty and paid a fine. *Id.*

³ The 2000 and 2003 alcohol arrests incidents are described differently in an Office of Personnel Management (OPM) investigator’s report and in the Individual’s response to the LOI. In the LOI response, the Individual described the 2000 and 2003 incidents separately and distinctly, but the OPM report states that he told the investigator he thought they were the same. *Compare* Ex. 7 at 8 (LOI where Individual is asked about 2003 *DUI* but admits to being arrested for *DWI* in 2003) and Ex.11 at 156-57 (criminal record printout indicating Individual was arrested for *DWI* in 2003 *with* Ex. 11 at 80 (OPM Investigation Interview where Individual denies being arrested for *DUI* in 2003). The record is complicated by the somewhat interchangeable use of the term *DUI* for *DWI*. However, I need not resolve the discrepancy regarding these 20-year old offenses since it would not affect my decision in this case.

In March 2007, the Individual pled guilty to DWI and was sentenced to one year of probation and a 28-day stay at an inpatient alcohol treatment facility. *Id.* at 81.

In May 2012, the Individual was charged with DUI. *Id.* He pled guilty and was sentenced to five years of probation, use of an ignition interlock device, and another 28-day stay at an inpatient alcohol treatment facility. *Id.*

In September 2013, the Individual was charged with abuse of a child (no death or great bodily harm). *Id.* at 81-82; 166-67. The Individual denies that any child abuse occurred and said he was charged because his brother had called the police because he was unhappy that the Individual, his wife, and his stepchild were staying on the property. *Id.* Specifically, the Individual reported that he, his then spouse and his stepdaughter had been playing with duct tape, making false fingernails with the tape and that he had taped his stepdaughter's legs together for a three legged race when his brother called the police. Ex. 11 at 81-82. The Individual and his wife took a parenting class, and the charge was dismissed with prejudice. *Id.*

In an Incident Report (IR) dated July 20, 2021, the Individual reported that he had been arrested for DUI on July 18, 2021. Ex. 6 at 4. He estimated that he had consumed a "12 pack of beer" prior to his arrest. Ex. 7 at 1.

In response to the August 2021 LOI, the Individual explained the circumstances of his July 2021 arrest, release, and probation. *Id.* at 1. He also reported that he had enrolled in an intensive outpatient program (IOP) as a condition of his pretrial release. *Id.* at 2-17.

As stated above, due to unresolved security concerns arising from the Individual's alcohol use, the Individual underwent an evaluation with the DOE Psychologist on March 3, 2022. Ex. 8. In forming his opinions, the DOE Psychologist relied on the information he obtained during the clinical interview with the Individual, as well as his review of the Individual's Personnel Security File (PSF), including the LOI and the IR. *Id.* at 3. During the clinical interview, the Individual and the DOE Psychologist discussed the Individual's history with substance use, his reasons for substance use, and his criminal history. *Id.* at 4-8. As part of the evaluation, the Individual underwent a phosphatidylethanol (PEth) test for alcohol use, which came back negative. *Id.* at 3-4.

In his Report, the DOE Psychologist diagnosed the Individual with AUD, moderate, in early remission. *Id.* at 10. He noted that the Individual had been subjected to daily alcohol tests at his workplace and that the workplace psychologist operating the program indicated that since testing began on July 18, 2021, the Individual had tested negative for alcohol use and that she believe the Individual has been abstinent since that date. Ex. 8 at 4. The DOE Psychologist recommended that, for the Individual to demonstrate rehabilitation or reformation, the Individual should (1) present evidence (such as negative PEth tests) that he has abstained from alcohol for an additional six months; (2) form a relationship with a psychodynamically-oriented therapist; and (3) continue to attend Alcoholics Anonymous (AA) at least three times a week. *Id.* at 11.

As a consequence of his 2021 DUI, the Individual testified, he was placed on one year of probation, ending in April 2023. Tr. at 17. His driver's license was suspended until November 2023,⁴ and he was ordered to complete counseling and community service. *Id.* Pursuant to the 2021 DUI, the Individual installed an ignition interlock device to enable him to drive his vehicle. *Id.* at 17-18. The ignition interlock device has been installed in the Individual's car since July 2021, and the device has never registered a breath alcohol concentration (BAC) that would prevent the Individual from starting his car. *Id.* at 18; Ex. B.

The Individual also testified that he has been sober since he got his DUI in July 2021. Tr. at 22. To support his sobriety, the Individual first enrolled in an IOP that met for approximately 9 hours a week for 16 weeks. *Id.* at 25. After this, he enrolled in an aftercare program that met once a week for 16 weeks and began going to AA meetings. *Id.* When the Individual completed the aftercare program, he began to attend AA meetings twice weekly in a group that would help to connect him with his ethnic community and culture. *Id.* at 26, 30. At the time of the hearing, the Individual was on step four of AA's twelve-step program. *Id.* at 37. After his July 2021 DUI, the Individual studied and completed the twelve steps. However, the Individual decided to go back and complete them again to ensure that he had thoroughly addressed all his struggles. *Id.* at 40. The Individual indicated that he has an AA sponsor who he speaks to regularly about sobriety and life. *Id.* at 41. He also explained that he was regularly attending individual therapy that helped him to identify triggers such as loneliness and learn how to deal with those emotions. *Id.* at 48-52.

The Individual explained that all the counseling he has pursued since his 2021 DUI has helped him to develop a "relapse prevention plan" and a support network that he can reach out to if he needs help. *Id.* at 29, 52. He testified that he would like to continue being involved with groups that specialize in relapse prevention and hopes that he will eventually be able to share the skills and coping mechanisms that he has learned to help others overcome alcoholism. *Id.* at 33. The Individual testified that he currently uses meditation and exercise to cope with stressful or upsetting situations. *Id.* at 46-47, 53-54, 93-94. He also stated that he will not repeat his past criminal behaviors anymore because he is dedicated to his sobriety and has realized that "acting like [he] was still a teenager is going to be, you know, catastrophic in my future." *Id.* at 56. He would also like to provide a better example for his stepdaughter. *Id.* at 57. The Individual testified that he has been undergoing monthly PEth tests since June 2022, all of which have come back negative. *Id.* at 20-21; Ex. B at 1-4.⁵

Two of the Individual's supervisors testified on his behalf. Tr. at 76, 85. Both supervisors stated that they found the Individual to be reliable and trustworthy and said that to their knowledge he had not had any alcohol-related issues at work. *Id.* at 78, 87.

⁴ The Individual currently uses a license that permits him to drive a car with an ignition interlock. Tr. at 57.

⁵ The Individual indicated in his testimony that he had been undergoing month PEth tests since May 2022. Tr. at 21. However, the documentation that he supplied only showed testing starting in June 2022. Ex. B at 1-4.

The DOE Psychologist testified that based on the testimony at the hearing he believed that the Individual had put forth sufficient evidence of rehabilitation.⁶ *Id.* at 97. He noted that the Individual had largely fulfilled the recommendations made in his Report. *Id.* at 97-98. While the Individual did not enroll in psychodynamic therapy, the Psychologist felt that the Individual's cultural group meetings provide the Individual with a feeling of connection like what would be achieved in psychodynamic therapy. *Id.* at 98. The DOE Psychologist also opined that he felt that the Individual has a "really good" prognosis for not drinking the next year and "pretty good" for not drinking the next two years. *Id.* at 99-100.

V. Analysis

The adjudicative process is "an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the whole-person concept." Adjudicative Guidelines at ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a national security eligibility determination. *Id.* Each case must be judged on its own merits. *Id.* at ¶ 2(b).

Specifically, the Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline G include:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations;
- (c) the individual is participating in counseling or a treatment program, has no previous history of treatment and relapse, and is making satisfactory progress in a treatment program; and
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Adjudicative Guidelines at ¶ 23.

After considering the record in this case, I find that the Individual has mitigated the stated Guideline G concerns pursuant to the mitigating factors at ¶ 23(b) and (d). The Individual recognized his alcohol use had become maladaptive and acknowledged at the hearing that his behavior prior to his 2021 DUI arrest was not mature and needed to change. Moreover, the

⁶ The Psychologist noted that although the Individual had testified that he had undergone monthly PEth tests, the Psychologist had not been able to see the results to confirm the tests were negative. Tr. at 97. The Individual entered these tests into the record after the hearing, and each test showed a negative result, confirming the Individual's testimony. Ex. B.

Individual has substantially complied with the DOE Psychologist's treatment recommendations. He underwent regular PEth tests, all of which came back negative, and is participating in AA meetings. In addition to meeting these recommendations from the Psychologist, the Individual completed an IOP, an aftercare program, and regularly attended meetings meant to connect him to his culture and community as part of his recovery. The Individual has also shown that he has learned how to employ the concepts he learned in these programs to successfully cope with triggers in a way that does not involve alcohol.

In addition, the Individual provided credible testimony and documentary evidence regarding his abstinence from alcohol since July 2021. This period of abstinence is supported by the DOE Psychologist's Report referencing the workplace psychologist's assessment of the Individual's abstinence beginning July 2021 which was corroborated by daily workplace testing along with the four negative PEth tests which he took approximately every month from June 2022 through October 2022. Further, as referenced above, there is convincing testimony from the DOE Psychologist attesting to the Individual's rehabilitation. Accordingly, I find that the mitigating factors at ¶ 23(b) and (d) are applicable in this case, and that the Individual has resolved the Guideline G security concerns raised in the SSC.

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline J include:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Adjudicative Guidelines at ¶ 32.

I find that the Individual has mitigated the Guideline J concerns pursuant to the mitigating factor at ¶ 32(a). Significantly, all the offenses, excepting the 2021 DUI occurred over 10 years ago. Further, almost all the offences were alcohol related. As his criminal history was inexorably tied with his alcohol consumption, the Individual's strong commitment to his sobriety along with the DOE Psychologist's assessment of rehabilitation provides compelling support for the conclusion that his alcohol related criminal behaviors are unlikely to recur. Regarding the criminal charges that were not alcohol related, there is no evidence in the record that the Individual has used marijuana since his May 2006 arrest and the Individual creditably testified regarding his lifestyle changes to avoid criminal activity. Nor is there any evidence of criminal family abuse issues since his arrest in 2013 and the subsequent dismissal of the charge pursuant to his and his spouse's participation in parenting classes. I also find that so much time has elapsed from his two non-

alcohol related arrests criminal offenses that they are unlikely to reoccur. Accordingly, I find that the mitigating factor at ¶ 32(a) and (d) are applicable in this case, and that the Individual has resolved the Guideline J security concerns raised in the SSC.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline G and Guideline J of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, the Individual has demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's security clearance should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Administrative Judge
Office of Hearings and Appeals